REMARKS

Claims 12-22 remain pending in the application and were examined in the most recent action. Claims 1-11 and 23-27 are withdrawn as being directed to a non-elected invention.

Claims 15-17 are amended in view of the § 112, second paragraph rejection. The applicant believes the amendments overcome and render the rejections moot. Withdrawal is therefore requested.

The applicants respectfully traverse the rejection under 35 USC § 103(a) and request reconsideration.

As amended, claim 12 defines an apparatus for determining the presence of heparin induced thrombocytopenia II complex (HiT II) wherein the apparatus is configured to test a first whole blood sample to determine first blood sample characteristic and a second whole blood sample to determine a second blood sample characteristic. Each of the first and second whole blood samples are tested to determine first and second blood sample characteristics that at least include a clot strength measurement, a clot elasticity measurement, a clot rate of formation measurement, a clot rate of lysis measurement of the respective blood sample. The first blood sample is tested in the presence of heparin and the second blood sample is tested without the addition of a platelet activator.

None of the cited references, and in particular, Cohen et al (WO/0196879A2) in view of Pravinkumar et al. (British J. of Anaesthesia 2003; 90 (5) 676-685) teach or suggest determining HiT II by testing whole blood samples for clot formation and/or clot strength characteristics.

To establish a *prima facie* case of obviousness, the cited references alone or in combination must teach each and every limitation of the claims. Failing to teach each and every limitation of the claim, the proffered combination fails to render the claimed combination unpatentable. It is because the proffered combination of Cohen in view of Pravinkumar fails to teach each and every limitation of the claims that the pending claims are allowable, and such action is requested.

The action essentially states that Cohen et al. teach a testing methodology and Pravinkumar teach that HiT II is problematic and should be avoided. Thus, it is posited in the action, one of ordinary skill in the art would use the Cohen et al. testing methodology to determine HiT II. Yet none of the references cited in the action or by the applicant teach or suggest using such an apparatus that purpose. That is, the proffered combination does not teach or suggest apparatus that compares blood sample characteristics at least relating to clot formation, clot strength and the like and provides an indication of HiT II, as claimed. Thus, the proffered combination of references does not teach or suggest each and every limitation of the claimed combination.

Furthermore, the action points to Pravinkumar merely to point out the existence of a problem, and thus seemingly, to establish motivation to use the Cohen et al. device to determine HiT II. Thus, Pravinkumar is not cited to teach or suggest any modification of the Cohen et al. apparatus, but instead to establish motivation to use the Cohen et al. apparatus in the manner claimed. If it is the case that the Cohen et al. device is otherwise unmodified but now used in a manner suggested by Pravinkumar, the claimed apparatus is fully described in the commonly owned US applications Serial Nos. 09/591,371 filed June 9, 2000 and 10/384,345 filed March 2, 2003 from which the instant application claims priority as is the Cohen et al. apparatus. Thus, the cited Cohen et al. reference is not prior art to an otherwise unmodified apparatus.

Thus, the applicant submits claims 12-22 are allowable, and such action is requested. Moreover, in view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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